

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Miriam Lynch	Team: Squad #9	CCRB Case #: 201507945	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 09/19/2015 10:23 PM	Location of Incident: Saint Johns Place and Schenectady Avenue	Precinct: 77	18 Mo. SOL 3/19/2017	EO SOL 3/19/2017	
Date/Time CV Reported Sun, 09/20/2015 1:52 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 09/20/2015 1:52 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Elijah Austin	14275	944338	PBBN SU
2. POM Kevin Deleon	16767	944493	PBBN SU
3. POM Argelis Rodriguez	17025	944943	PBBN SU

Officer(s)	Allegation	Investigator Recommendation
A.POM Elijah Austin	Abuse: PO Elijah Austin frisked § 87(2)(b)	
B.POM Elijah Austin	Abuse: PO Elijah Austin stopped § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

§ 87(2)(b) filed this complaint on behalf of his § 87(2)(b) -old son, § 87(2)(b) § 87(2)(b). On September 19, 2015, at 10:23 p.m. at the intersection of § 87(2)(b) in Brooklyn § 87(2)(b) was walking home from a family barbecue in Jackie Robinson Park. As § 87(2)(b) was crossing Schenectady Avenue, PO Elijah Austin of Patrol Borough Brooklyn North Special Unit stopped § 87(2)(b) and frisked him (**Allegations A and B**). Also present were PO Argelis Rodriguez and PO Kevin Deleon of Patrol Borough Brooklyn North Specialized Unit. After PO Austin frisked him, § 87(2)(b) § 87(2)(b) was released without being issued a summons or being arrested.

Video footage of this incident was obtained from a stationary camera on Max Tax financial services, a business in the vicinity of the incident location (B.R.1).



snagitsilentstephens.mp4

This case took longer than 90 days to close due to the necessity of collecting and assessing documents from multiple plain clothes commands in north Brooklyn in order to eliminate other potential subject officers. Additionally, multiple attempts to contact § 87(2)(b) and § 87(2)(b) § 87(2)(b) were unsuccessful, as they did not respond to contact attempts.

Mediation, Civil and Criminal Histories

- § 87(2)(b) and § 87(2)(b) accepted mediation (B.R. 2), but the case could not be mediated, because PO Austin, PO Rodriguez, and PO Deleon did not acknowledge being involved in the incident (B.R. 3, 4, and 5).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- A Notice of Claim request was submitted on behalf of § 87(2)(b) on December 23, 2015 (B.R. 8). The results will be added to the case file upon receipt.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (B.R. 9).
- This is the first CCRB complaint involving § 87(2)(b) (B.R. 10).
- PO Austin has been a member of service for eight years. He has two prior CCRB complaints against him, amounting to four previous allegations. Case 201010737 involved three substantiated allegations: threat of force, refusal to provide name and shield, and discourtesy. Case 201200232 involved an unsubstantiated refusal to provide name and shield number allegation (B.R. 11).

§ 87(2)(g)

Potential Issues

Follow-up attempts to contact § 87(2)(b) and § 87(2)(b) were made so that § 87(2)(b) could view a photo array. Neither § 87(2)(b) nor § 87(2)(b) responded to multiple contact attempts.

Findings and Recommendations

Allegations Not Pleaded

Abuse- Stop allegations were not pleaded against PO Rodriguez and PO Deleon, despite the fact that they were present, despite the fact that they were present, because § 87(2)(b) alleged that PO Austin stopped him before PO Rodriguez and PO Deleon arrived on the scene next to him. The video of the incident also shows PO Austin approaching § 87(2)(b) before PO Rodriguez and PO Deleon leave the vehicle to join him. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Explanation of Subject Officer Identification

§ 87(2)(b) described the subject officer as a 32-year-old black male, with a medium skin tone, who stands 6'4" tall. He stated that the witness officers in this case were two white officers who stood 5'7" and 5'8" tall. One witness officer was of an average build, and the other one had a heavier build. Both witness officers were approximately 35 years old. All of the officers came from a black, unmarked sedan. § 87(2)(b) did not obtain or provide any names or shield numbers for any of the officers (B.R. 2).

The video of this incident shows § 87(2)(b) who is 6' tall, being stopped and frisked by a black plain clothes officer who is somewhat taller than he is. A black sedan pulls up next to him, and two light-skinned officers get out. The driver of the vehicle has a visible full beard. He appears to be as tall as § 87(2)(b) who is listed as being 6' tall, when he stands next to him. After the black officer frisks § 87(2)(b) § 87(2)(b) walks away. All three officers leave the incident location in the same black sedan (B.R. 1).

This incident occurred within the confines of the 77th Precinct. The incident location is not near the border of the 77th Precinct and any other precinct. All of the plain clothes Anti-Crime officers from the 77th Precinct that evening were white. Therefore, the subject officers could not be found among the 77th Precinct Anti-Crime officers (B.R. 12 and 24).

All of the black Brooklyn North Narcotics detectives were assigned to a search warrant at a location within the confines of the 73rd Precinct on the evening of the incident. During that warrant execution, a member of service was discovered at the warrant location. Consequently, at the time of the incident, all of the detectives who could be subject officers from Narcotics were being interviewed by IAB (B.R. 13 and 24).

All of the black detectives from the Brooklyn Gang Squad who were active at the time of the incident were 5'10" tall or shorter. Furthermore, all of these detectives were making arrests within the confines of the 90th Precinct one hour before and one hour after the incident time, which makes a side trip to the 77th Precinct unlikely (B.R. 14 and 24).

PO Austin did not have any memo book entries in regards to his assignment for September 19, 2015, but PO Deleon and PO Rodriguez both have memo book entries that refer to their being deployed to the 77th Precinct on the date of the incident (B.R. 15 and 16). The Patrol Borough Brooklyn North Roll Call also lists them as being assigned to the 77th Precinct on the incident date (Board Review 23). PO Rodriguez, PO Deleon, and PO Austin stated that all three officers were assigned to a black Ford Focus on the date of the incident, which correlates to the vehicle mentioned in § 87(2)(b) testimony and the car seen on the video (B.R. 3, 4, and 5). Furthermore, PO Austin, PO Deleon, and PO Rodriguez all admitted to driving through the 77th Precinct on September 19, 2015, because their command, located at Washington Avenue

and Grand Street, is within the confines of the 77th Precinct (B.R. 3, 4, and 5). By PO Rodriguez's and PO Deleon's testimony, none of the officers switched cars on the date of the incident.

PO Austin, as a 6'2" tall, § 87(2)(b)-old black male, closely matches § 87(2)(b) description of the subject officer, as well as the subject officer as seen in the video. PO Rodriguez also resembles a witness officer seen in the video; he is 6' tall and testified to having a full beard throughout the month of September (B.R. 4). Both PO Deleon and PO Rodriguez are white Hispanic men. § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation A –Abuse of Authority: PO Elijah Austin stopped § 87(2)(b)

Allegation B –Abuse of Authority: PO Elijah Austin frisked § 87(2)(b)

§ 87(2)(b) claimed that he was returning from his aunt's barbecue, and had just disembarked from a bus, when he was approached by PO Austin. PO Austin followed him across a street, and stopped him at the corner of Saint Johns Place and Schenectady Avenue. PO Austin showed § 87(2)(b) his shield and began to frisk § 87(2)(b). While PO Austin was frisking § 87(2)(b) he asked him where he had been going and where he had come from. After he frisked § 87(2)(b) PO Austin told § 87(2)(b) that his sling had looked suspicious (B.R. 2).

PO Austin did not have any independent recollection of being at the incident location, of interacting with anyone who had a sling. He denied stopping and frisking § 87(2)(b) (B.R. 3). PO Rodriguez and PO Deleon similarly did not remember being at Saint Johns Place and Schenectady Avenue (B.R. 4 and 5). None of the officers had any memo book entries about this incident; all three of them had a memo book gap between 8:30 p.m. when they began patrol, and 12:13 a.m. when PO Austin made an arrest at Junius Street and Blake Avenue, which is in the 73rd Precinct (B.R. 15, 16, and 19). By PO Deleon's testimony, this location is a five-minute drive from the border of the 77th Precinct, at Ralph Avenue (B.R. 5).

People v. DeBour, 40 N.Y.2d 201 (1976) requires officers to have reasonable suspicion that the individuals they stop be involved in criminality. By this decision, it also behooves officers to believe that the people they frisk are armed (B.R. 20).

§ 87(2)(g)

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§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

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Squad #9

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date